## REMARKS

The claims in the present application are 1-17. Claim 1, 3 and 7 have been amended. Claims 16 and 17 are new claims.

Claims 1-15 have been provisionally rejected on the ground of non-statutory obviousness-type double patenting as unpatentable over Claims 1-9 and 20-24 of copending Application No. 10/491,690 (Application '690) in view of Levchik et al. Publication No. 2005/0020800 (Levchik et al.) This rejection is respectfully traversed.

The Examiner's attention is respectfully invited to the fact that Levchik et al. is not available as prior art to the subject application since Levchik et al. is not the invention "of another" as required by 35 U.S.C. § 102 (e). Levchik et al. would only be available as prior art to the subject application under 35 U.S.C. § 102(e), however, Levchik et al. is disqualified as a reference under 35 U.S.C. § 103(c) (1) wherein "of another" is defined as:

> "(c) (1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person." [Underling added for emphasis] (See also MPEP § 706.02(l)(3)(C) Examination Procedure With Respect to 35 U.S.C. 103(c))

Both the subject application and Levchik et al. were subject to an obligation of assignment to the same organization at the time the presently claimed invention was made. Thus, Levchik et al. is disqualified as prior art to the subject application. Since Levchik et al. is unavailable as prior art, the provisional rejection of Claims 1-15 for non-statutory obviousness-type double patenting over Claims 1-9 and 20-24 of Application '690 in view of Levchik et al. is inappropriate and the withdrawal of the rejection is respectfully deemed to be in order.

Claims 1-15 have been rejected on the ground of non-statutory obviousness-type double patenting as unpatentable over Claims 1-9 of Levchik et al. in view of U.S. Patent No. 5,945,222 to Nagase et al. (Nagase et al.) This rejection is respectfully traversed.

The Examiner's attention is invited to the fact that under MPEP § 804 (I.)(C.) a double patenting rejection between one or more applications and a published application is indicated to be a provisional rejection.

The Examiner asserts that it would have been obvious to mix the filler of Nagase et al. such as inorganic filler into the composition of Levchik et al. in order to adjust the viscosity. However, the Examiner's attention in invited to page 2, lines 28-30 of the subject application where it discloses that "[i]n accordance with the present invention, the additional presence of filler has allowed for the use of lower amounts of the phosphonate additive." The Examiner's attention is further drawn to page 2, line 32 to page 3, line 4, where it discloses:

> "[t]he use of the filler allows for the production of a sufficiently flame retarded epoxy composition, despite the use of lower amounts of phosphonate flame retardant, while still producing a product having good physical properties (such as higher Tg, better hydrolytic stability, etc)."

There is no teaching or suggestion in Nagase et al. to add an inorganic filler to the composition of Levchik et al. for the purposes of the present invention as described in applicant's specification as referred to above. Thus, one skilled in the art would not be motivated by the teaching of Nagase et al. to add inorganic filler to the composition of the present invention.

Therefore, the withdrawal of the rejection of Claims 1-15 for non-statutory obviousness-type double patenting over Claims 1-9 of Levchik et al. in view of Nagase et al. is also respectfully deemed to be in order.

The Examiner has rejected Claims 1-15 under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent No. 2001-19746 (Japanese '746). The Examiner has further rejected Claims 1-15 under 35 U.S.C. 103(a) as unpatentable over Japanese Patent No. 2001-302879 (Japanese '879) in view of Levchik et al., Japanese '746 or U.S. Patent No. 4,268,633 (Fearing '633).

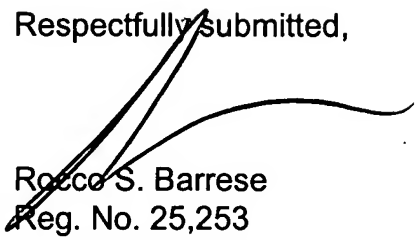
Firstly, it is again respectfully noted, that as discussed above, Levchik et al. is unavailable as prior art to the subject application. Furthermore, while Applicants disagree with the afore-recited rejections of Claims 1-15 under 35 U.S.C. §103 (a), Applicants have amended Claim 1 in harmony with the Examiner's suggestion so that Claim 1 now recites that the reactive phosphonate curing agent is a reactive hydroxy-terminated oligomeric phosphonate curing agent comprising the repeating unit OP(=O)(R)-O-Arylene- wherein R is lower alkyl. As such, it is believed that the above-noted rejections of Claims 1-15 under 35 U.S.C. § 103 (a) have been obviated. Thus, the withdrawal of the rejections of Claims 1-15 under 35 U.S.C. § 103 (a) are deemed to be in order and the same is respectfully requested.

The Examiner's suggestion that the specification be amended to insert the identification of R as lower alkyl as supported by page 3, lines 19-24 is not understood, in view of the fact that such disclosure is already provided in the specification (see page 2, lines 19-24).

In view of all of the above, allowance of the claims as presently presented is deemed to be in order and the same is respectfully requested.

Early favorable action is earnestly solicited.

Respectfully submitted,



Rocco S. Barrese
Reg. No. 25,253
Attorney for Applicant(s)

**DILWORTH & BARRESE, LLP**
333 Earle Ovington Blvd.
Uniondale, New York 11553
Phone: 516-228-8484
Facsimile:516-228-8516